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CIS Congressional Information Service Washington D C

101ST CONGRESS
1st Session

SENATE

EXEC. REPT.
101-18

MARITIME COUNTER-TERRORISM CONVENTION, WITH RELATED PROTOCOL

NOVEMBER 19 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 101-1]

The Committee on Foreign Relations to which was referred the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and the Accompanying Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, both signed at Rome on March 10, 1988, having considered the same, reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Treaty Doc. 101-1), are designed to ensure that individuals who commit acts of terrorist violence which endanger the safe navigation of a ship or the safety of a marine platform are either prosecuted in the state in which they are found or extradited to another state for prosecution.

BACKGROUND

The 1988 Rome Convention and Protocol (Treaty Doc. 101-1) were drafted after the 1985 seizure of the Italian cruise ship *Achille Lauro* and the savage murder of the American passenger, Leon Klinghoffer.

This Convention and Protocol are aimed at ensuring that those who engage in vicious acts of terrorist violence on board or against ships or fixed marine platforms are brought to justice. They in-

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clude provisions requiring nations to provide severe punishment for such offenses, and to extradite or prosecute those who commit them.

These international agreements are designed to fill a gap in the international legal regime governing acts of violence on board or against ships engaged in international maritime navigation as well as fixed platforms located on the continental shelf.

The following is a summary of the Convention's major provisions prepared by the Department of State:

(1) *Scope of the Convention.*—The Convention applies to any ship (broadly defined to include vessels of any type not permanently attached to the seabed) which is navigating or is scheduled to navigate beyond the territorial waters of a single State. Exceptions are made for warships, State-owned or operated ships used for customs or police purposes or as naval auxiliaries, and ships which have been withdrawn from navigation or laid up. The sovereign immunity of warships and other public vessels is preserved. The Convention makes it an offense for a person unlawfully and intentionally to seize or exercise control over a ship by force, threat or intimidation; to perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of the ship; to destroy a ship or damage a ship or its cargo; to place a destructive device or substance on a ship; to damage or destroy maritime navigational facilities; to communicate information known to be false, thereby endangering the safe navigation of a ship; or to kill or injury any person in connection with the commission or attempted commission of any of these offenses. A person also commits an offense by attempting or abetting the commission of any of these offenses, or by threatening to commit certain of them.

(2) *Penalties and jurisdiction.*—Each State Party is obliged to make the acts covered by the Convention punishable by appropriate penalties which take into account the grave nature of the offenses. Each State is required to establish its jurisdiction over offenses committed against or on board a ship flying its flag, in its territory including its territorial sea, and by its nationals. Each State may, at its option, also establish jurisdiction over offenses: which are committed by stateless persons habitually resident in its territory; during which one of its nationals is seized, threatened, killed or injured; or which are committed in an attempt to compel that State to do or abstain from doing any act.

(3) *Custody.*—Each State is obliged to take into custody an offender or alleged offender found in its territory or to take other measures to ensure that person's presence for such time as is necessary to enable criminal or extradition proceedings to be instituted. States Party are also obliged to take custody from the master of a ship of another State Party of any person reasonably believed to have committed one of the covered offenses; such States may, in turn, request that the flag State accept delivery of the person.

(4) *Extradition or prosecution.*—The Convention amends existing extradition treaties between Parties to include the covered offenses as extraditable offenses and provides that they shall be extraditable offenses between States which do not make extradition conditional on an extradition treaty. If a State in which an offender is found does not extradite that person or delivery him or her to an-

other State Party for purposes of prosecution, that State is obliged "without exception whatsoever and whether or not the offense was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution."

(5) *Reporter.*—When a State has taken a person into custody, it must immediately notify those States which have established the required jurisdiction over the offenses, and any other interested States. States Party having reason to believe that a covered offense will be committed must immediately inform those States it believes would have established jurisdiction over such an offense. States Party must also inform the Secretary-General of any relevant information concerning the circumstances of an offense and measures taken in relation to an offender, including the results of any extradition or other legal proceeding.

(6) *Cooperation.*—The Convention requires States Party to afford each other the greatest measure of assistance in connection with criminal proceedings brought in respect of covered offenses, and to cooperate in the prevention of such offenses by taking practicable measures to prevent preparations in their territories for those offenses, by exchanging information, and by coordinaring administrative and other preventative measure.

(7) *Limitations.*—The Convention explicitly provides that its provisions do not affect the immunities of warships and other Government ships operated for noncommercial purposes, or the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag. In addition, the Convention does not exclude any criminal jurisdiction that may be exercised in accordance with national law.

Article 16 of the Convention, concerning dispute settlement, permits States Parties to submit disputes to the International Court of Justice in the event that those disputes cannot be settled by arbitration. It is the intention of the Administration, at the time of ratification, to exercise its right under paragraph 2 of that Article to declare, by means of reservation, that it does not consider itself bound to submit to the compulsory jurisdiction of the Court in respect of disputes arising under this Convention.

The Protocol applies the provisions of the Convention to offenses committed on board or against fixed platforms located on the continental shelf. The term "fixed platform" is defined to include an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources, or for other economic purposes. Thus, oil rigs, floating hotels, and similar platforms will be afforded the same protection by the Protocol as ships are afforded by the Convention.

Entry Into Force

The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation will enter into force 90 days after the date on which 15 states have signed without reservation or have deposited instruments of ratification, acceptance, approval or accession. As of November 9, 1989, the following three countries

have acted: Spain, the Seychelles, and the German Democratic Republic.

The Protocol to the maritime terrorism convention may enter into force 90 days after the date on which three states have signed without reservation or deposited similar instruments, provided that the Convention must first be in force. A nation may only become Party to the Protocol if it has become Party to the Convention. Currently, the following countries have deposited the appropriate instruments of ratification for this Protocol: Spain, the Seychelles, German Democratic Republic, and Trinidad and Tobago.

Committee Action

The Committee considered the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Supression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Treaty Doc. 101–1) on Friday, November 17, 1989. At that time the Committee voted to favorably report this Protocol by a vote of 15–0. The following Senators voted in the affirmative Pell, Biden, Sarbanes, Dodd, Kerry, Sanford, Moynihan, Robb, Helms, Lugar, Kassebaum, Boschwitz, Pressler, Murkowski, and McConnell.

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to ratification of the Convention for the Supression of Unlawful Acts Against the Safety of Maritime Navigation, and the Accompanying Protocol for the Supression of Unlawful Acts Against the Safety of Fixed Platform Located on the Continental Shelf, both signed at Rome on March 10, 1988.

APPENDIX

The following is a formal statement by the Administration in support of this Convention and Protocol.

STATEMENT OF ELIZABETH R. RINDSKOPF, PRINCIPAL DEPUTY LEGAL ADVISER (ACTING), U.S. DEPARTMENT OF STATE ON 1988 PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION AND CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, WITH RELATED PROTOCOL

Thank you Mr. Chairman. I am very pleased to have this opportunity to testify today on behalf of three international legal instruments that strengthen the ability of the international community to respond effectively to the threat of terrorism to international travel. The U.S. Senate's advice and consent to ratification of these three separate agreements on airport and maritime security will be an important step in our effort to strengthen the framework of international law against terrorist acts.

The first of these instruments, the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal, 24 February 1988* ("Airport Security Protocol"), is a Protocol supplementary to the *1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* ("Montreal Sabotage Convention") (24 U.S.T. 5564, T.I.A.S. No. 7570), to which the United States is a Party. The Airport Security Protocol extends the international prohibitions against acts of violence against aircraft to include certain acts of violence at airports serving international civil aviation. The other two instruments—the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation,* ("Maritime Terrorism Convention"), and its related *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*—in essence extend to the maritime community the kinds of protections afforded to civil aviation by conventions on aviation security, including the Montreal Sabotage Convention and its Airport Security Protocol. As the discussion below indicates, these three instruments represent important international initiatives in the struggle against international terrorism.

I. PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION, DONE AT MONTREAL, 24 FEBRUARY 1988.

A. An overview

This Protocol to the Montreal Sabotage Convention was stimulated by the Abu Nidal organization's December 1985 attacks on Rome and Vienna airports that killed twenty persons, including five Americans. Those brutal attacks, in which the terrorists shot at passengers in the airport building without even coming close to the aircraft, demonstrated that the airport facilities themselves, in addition to the aircraft, needed to be brought under the umbrella of international anti-terrorist conventions. Previous conventions, such as the 1971 Montreal Sabotage Convention, and the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking) (22 U.S.T. 1641, T.I.A.S. No. 7192) only covered terrorist acts committed against airplanes.

In the wake of the Rome and Vienna airport attacks, the Assembly of the International Civil Aviation Organization ("ICAO") unanimously called for the development of a new international instrument for the suppression of unlawful acts of violence at airports serving international civil aviation. A subcommittee of the ICAO Legal Committee and the full Legal Committee met in January 1987 and April-May 1987, respectively, to develop this Protocol. The final text of the instrument was adopted by consensus by the eighty-one nations represented at an International Conference on Air Law, held in Montreal in February 1988, under the auspices of ICAO. Over seventy nations have signed the Protocol and thirteen have deposited their instruments of ratification. The Airport Security Protocol is now in force for those States that have ratified it.

Briefly summarized, the Airport Security Protocol supplements and extends the legal framework of the Montreal Sabotage Convention—including the obligation on States Parties to prosecute offenders themselves or extradite them for prosecution by other States—to encompass unlawful acts of violence committed at airports serving international civil aviation, even where such acts do not endanger the safety of aircraft in flight. Pursuant to Article I of the Protocol, as between parties to both the Protocol and the Montreal Sabotage Convention, those two documents are to be read and interpreted as a single instrument.

B. Description of the Airport Security Protocol

The major provisions of the Airport Security Protocol are as follows:

Paragraph 1 of Article II sets forth the offenses covered by the Protocol and will be Article I, paragraph 1 *bis* for the parties to the Montreal Convention as supplemented by the Protocol. This article states that a person commits an offense if he unlawfully and intentionally, using any device, substance, or weapon (a) performs certain acts of violence at an international airport or (b) destroys or seriously damages the facilities of an international airport or aircraft not in service located thereon, or disrupts service at that airport. To be an offense under this provision, the Protocol requires

that these acts endanger or be likely to endanger safety at an airport serving international civil aviation.

Paragraph 2 of Article II provides that the words "or paragraph 1 *bis*" will be inserted after the words "paragraph 1" in paragraph 2(a) of Article I of the Montreal Convention. Through this amendment, the supplemented Montreal Convention will also include as offenses (a) attempts to commit any of the acts listed in paragraph 1 of Article II of the Protocol and (b) complicity in such acts or attempts.

Article III of the Protocol adds a paragraph 2 *bis* to Article 5 of the Montreal Convention. Under the new paragraph, each party agrees to take measures to establish jurisdiction over the offense mentioned in the Protocol, where an alleged offender is present in its territory and it does not extradite him pursuant to Article 8 of the Convention.

Article IV through VII set out the procedures for signature, ratification, accession and entry into force of the Protocol. Article V provides that a state that is not a party to the Montreal Convention may ratify the Protocol if, at the same time, it ratifies or accedes to the Convention. Pursuant to Article VI, as soon as ten signatory states have deposited their instruments of ratification, the Protocol shall enter into force between them on the thirtieth day after the date of the deposit of the tenth instrument of ratification. Article VIII provide the rules for denunciation of the Protocol, and Article IX establishes certain responsibilities for the Depositories of the Protocol.

Having described the Airport Security Protocol, I am pleased to express the Administration's strong support for its ratification. The instrument represents another important international step to prevent and punish terrorists. By including acts of violence committed in airports within the "prosecute or extradite" regime embodied in the Montreal convention, the Protocol closes a significant "loophole" in the international fight against aviation terrorism. While this Protocol cannot guarantee that similar tragedies at airports will not occur in the future, it does serve as a deterrent and increases the likelihood that those responsible, if apprehended, will be held accountable.

The Protocol also represents a significant achievement in international cooperation to fight terrorism. The United States was a leader in the call for the negotiaton of this instrument. Its successful conclusion under ICAO auspices was a significant achievement that illustrates the ability of nations to work together to prevent and punish acts of violence against civil aviation. The unprecedented speed in which ICAO mechanisms adopted this instrument reflect its importance to the international community.

II. CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION, WITH RELATED PROTOCOL

A. An overview

The second instrument before the committee, the Maritime Terrorism Convention, is modeled after the earlier Hague and Montreal Conventions dealing with aircraft hijacking and sabotage. It provides that when specified offenses (such as ship hijacking) are com-

mitted in defined circumstances (primarily beyond the territorial sea of the State of a Ship's registry—the "flag State"), States which are parties to the Convention have an obligation to extradite or prosecute offenders found within their territories if certain jurisdictional prerequisites are met.

Like the Airport Security Protocol, the Maritime Terrorism Convention was prompted by a tragic act of terrorist violence, in this case, the seizure of the Italian cruise ship *Achille Lauro* in October 1985 and the murder of an elderly American passenger, Leon Klinghoffer. This senseless act demonstrated that no country, or form of transportation, is immune from the terrible savagery of those who engage in terrorism. The *Achille Lauro* carried passengers from about 20 nations. Like the Airport Security Protocol, this Convention is intended to ensure that those responsbile for such terrible actions are apprehended and brought to justice.

Work on the Maritime Terrorism Convention began in 1986 under the auspices of the International Maritime Organization. This work, based on a draft provided initially by the Governments of Italy, Austria, and Egypt, was, like the Airport Security Protocol, expeditiously completed, and the Maritime Terrorism Convention and its Protocol were adopted by consensus, at an international conference in Rome in March, 1988. The United States and twenty-two other States signed the Convention at that time, and the United States and twenty other States also signed the related Protocol on Fixed Platforms. Since then, nineteen additional States have signed the Convention and two States have ratified it.

B. Description of the Convention and related protocol

The Convention, which consists of a preamble, twenty-two articles and a protocol extending the provisions of the Convention to fixed platforms located on the continental shelf, begins with several articles articulating the scope of its application. The Convention begins in article 1 by defining a ship as any vessel not "permanently attached to the sea-bed." Several exceptions to this definition are set out in Article 2, which provides, *inter alia,* that the Convention does not apply to warships, or to state-owned ships used for naval, customs, or police purposes.

Article 4 sets forth a general statement of the scope of the Convention by stating that the Convention applies to ships navigating or planning to navigate beyond the territorial sea of a single state. Thus, not only does the Convention cover offenses committed on the high seas or in international straits, it also applies to ships that are crossing a territorial sea in order to reach the high seas, and to ships traveling between ports of a single State if their route takes them outside that State's territorial sea. In addition, Article 4 also provides that even where a ship confines its actual and planned navigation to the territorial sea of a single State, the Convention nevertheless applies if the offender is found in a State other than the one in whose territorial seas the ship was navigating at the time of the offense.

The purpose of Article 3, which enumerates the acts that constitute offenses under the Convention, is to overcome concerns that were raised as to the adequacy of international law to enable States other than that of a ship's registry to apprehend and pros-

ecute those who commit terrorist acts on the high seas. In the aftermath of the *Achille Lauro* incident, there existed considerable controversy about whether such terrorist acts fell within the international law of piracy. For example, the 1932 Harvard Draft Convention on Piracy, the 1958 Geneva Convention on the High Seas, and the 1982 United Nations Convention on the Law of the Sea, all define piracy as an act of violence for private ends by one ship against another. Because the seizure of the *Achille Lauro* was arguably not committed for private ends and was committed by the ship's own passengers rather than by members of another ship, the existing international law on piracy was seen by some as inadequate to deal with the situation.

Article 3 solves the problem by enumerating the following acts deemed to be in violation of the Convention, without regard to the motive of the offender or whether the offender attacked from another ship: (1) hijacking a ship, (2) violence against a person on board a ship where such violence is likely to endanger the safe navigation of the ship, (3) sabotage of a ship or maritime navigation facilities, (4) communication of false information regarding navigation, and (5) injuring or killing any person in connection with other offenses.

The Convention differs from most previous anti-terrorist conventions in that it specifically makes it an offense to injure or kill a person. This provision was specifically included in response to the murder of Leon Klinghoffer during the *Achille Lauro* hijacking. By way of contrast, the Hague Hijacking Convention makes it an offense to seize an airplane, but the killing of a passenger by the terrorists after the plane has been seized, as happened in the TWA hijacking in 1985, is not an enumerated offense under the Convention; the Hostage Convention makes it an offense to seize or detain and threaten to kill or injure a person, but the actual murder of the person seizes is not an offense under the Convention. By including murder as an enumerated offense, the Maritime Terrorism Convention avoids a major gap present in these other anti-terrorist conventions.

In order to ensure that no person committing an Article 3 offense escapes prosecution, the Convention establishes in Article 6 three bases of mandatory jurisdiction and three bases of permissive, or discretionary, jurisdiction. Specifically, when an offense is committed against a flagship of a state, or in the territory of that state, or by a national of the state, the state is *required* to assert jurisdiction over the offender. When an offense is committed by a stateless person who is a resident of a state, or when a state's national is seized, threatened, injured, or killed during the commission of an offense, or when an act is committed in an attempt to compel a state to act in a certain way, that state is *permitted* to assert jurisdiction over the offender.

The final basis of permissive jurisdiction, which vests jurisdiction in the state whose conduct the terrorists sought to affect by the attack, was modeled after Artile 5 of the Hostage Convention. The United States pressed for inclusion of the clause in the Maritime Terrorism Convention because the possibility exists that terrorists seeking to compel a state to act in a certain way will not limit their attacks to the nationals or flagships of that state. The *Achille*

Lauro, for example, flew an Italian flag, the person killed was a U.S. national, but the terrorists' demand was for release of prisoners by Israel. Though the *Achille Lauro* was not an Israeli flag ship and apparently did not have any Israeli nationals board, it is nonetheless self-evident that Israel had a significant interest in the matter.

The multiple bases of jurisdiction increase the chances that at least one state will take affirmative steps to ensure prosecution of maritime terrorists. The provisions for jurisdiction by the state of nationality of the victim and by the target state are particularly important from the United States' perspective. The United States may not be the state of nationality of the offender and may not be the flag state, but it already has been, and will unfortunately probably continue to be, the state of nationality of the victim and one of the states whose conduct terrorists seek to affect by their attacks.

The heart of the Maritime Terrorism Convention, as of the other anti-terrorist conventions, is the extradite or prosecute requirement—the obligation of each State Party to the Convention in which an alleged offender is found either to extradite the offender to one of the states that has jurisdiction under the Convention or to submit the case to its authorities for prosecution. This requirement is contained in Articles 7 through 11 of the Convention. Article 7 requires that any state in whose territory an alleged offender is found must take the offender into custody or take other measures to ensure his or her presence for criminal or extradition proceedings. Article 10 obligaties a state in whose jurisdiction an alleged offender is found to extradite the offender to another state that has jurisdiction under the Convention or to submit the case to its authorities for prosecution. Finally, to facilitate extradition pursuant to existing treaties, the Convention provides in Article 11 that all Article 3 offenses are "deemed to be included" in extradition treaties.

Although it is entitled a Convention for the Supression of Unlawful Acts Against the Safety of Maritime Navigation, the operative provisions I have described so far deal not so much with the supression of terrorist acts, as with the apprehension, conviction and punishment of those who commit such acts. Only one provision, Article 13, addresses the problem of prevention or suppression directly. That article requires States Parties to cooperate in the prevention of maritime terrorism through the exchange of information and coordination of necessary measures to prevent the commission of offenses.

The final articles governing dispute resolution, signature, entry into force, denunciation, amendments, depositary, and languages, are largely standard provisions similar to that contained in the other anti-terrorist conventions to which the United States is a party.

Before concluding my remarks, I would like to say a few words about the Protocol on Fixed Platforms. Originally, the scope of the Maritime Terrorism Convention was limited to ships. Because the United States has numerous platforms situated on the continental shelf beyond the outer limits of any state's territorial sea which are equally vulnerable to terrorist attacks, our negotiators sought

to have such fixed platforms included in the scope of the Convention. Our initial efforts to this end, however, met with resistance by a number of states, which feared that bringing fixed platforms within the Convention's coverage would intrude into their domestic jurisdiction over the continental shelf. As a compromise, we agreed to the creation of an optional Protocol.

The Protocol applies the provisions of the Convention to offenses committed on board or against fixed platforms located on the continental shelf. The term "fixed platform" is defined to include an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources, or for economic purposes. Thus, oil rigs, floating hotels, and similar platforms will be afforded the same protection by the Protocol as ships are afforded by the Convention.

III. CONCLUSION

In conclusion Mr. Chairman, the development and drafting of the Airport Security Protocol and the Maritime Terrorism Convention and its related Protocol illustrate our resolve to work in the multilateral arena to supplement our bilateral and unilateral efforts to combat international terrorism. These three instruments make it clear that acts of airport-related and maritime-related terrorism are to be deemed not as the activities of so-called freedom fighters but rather as unacceptable acts of criminals which deserve to be punished.

Because the Airport Security Protocol and the Maritime Terrorism Convention and its related Protocol are not self executing, they will require domestic implementing legislation before the United States becomes a party to them. Should the Senate give its advice and consent, the United States will not deposit its instruments of ratification until such legislation is enacted. The Department of Justice has prepared a draft of such legislation, which has been made available to the Committee staff.

These three instruments enjoy broad international support, and the Senate would be making an important contribution to strengthening the rule of law against terrorism by approving them at an early date. I am therefore pleased to express the Administration's strong support for these instruments and to recommend that the Senate give its advice and consent to their ratification.

Thank you Mr. Chairman for allowing me to appear today.

Questions and Answers To Accompany the Testimony of Elizabeth R. Rindskopf, Principal Deputy Legal Advisor (Acting), U.S. Department of State on 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation and Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, With Related Protocol

Question 1. Would you provide the Committee with the most up-to-date statistics on terrorist attacks against airports, vessels and fixed maritime platforms? What efforts are underway on the international level to physically protect airports, vessels and fixed platforms?

Answer. In 1988, there were 856 terrorist attacks worldwide resulting in 658 persons killed and 1,131 wounded, a three percent increase over the 1987 figure. In 1988, terrorists were responsible for three major incidents—the hijacking of a Kuwaiti airliner, the attack on a Greek day-excursion ship, and the bombing of Pan Am 103 over Scotland. According to preliminary figures which are subject to revision, incidents of international terrorism have fallen during the first ten months of this year compared with the same period for last year. The only major incident this year has been the bombing of UT 772 over Niger in September, which resulted in over 150 persons killed.

In terms of international protective efforts, the most significant effort should be to bring into force ICAO's Airport Security Protocol and the IMO's Maritime Terrorism Convention and its Fixed Platforms Protocol, both of which will increase the likelihood that those responsible for acts of terrorism at airports and on the high seas are apprehended and prosecuted. In addition, the International Civil Aviation Organization is currently working to prepare a new international instrument requiring the tagging of plastic explosives during the manufacturing process to render such explosives detectible by readily available security equipment.

Question 2. How effective are the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO) in urging their member nations to take steps to protect airports, vessels, and fixed maritime platforms? Are you satisfied with the efforts of these organizations to combat international terrorism?

Answer. Both ICAO and IMO deserve the highest praise for their recent achievements in the fight against international terrorism.

Three major multilateral conventions on international aviation security have been drafted under ICAO auspices: The Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo 1963), the Convention for the Suppression of Unlawful Seizures of Aircraft (The Hague 1970), and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal 1971). Most of the world's countries are party to all three of these instruments. In addition to these three conventions, ICAO has developed international obligations in the form of "standards and recommended practices" on aviation security for all States engaged in international civil aviation. These standards and recommended practices, known as "Annex 17" to the 1944 Convention on International Civil Aviation (the Chicago Convention), are subject to a continuous review process by ICAO and its member States. Additionally, ICAO has developed a model security provision for inclusion in bilateral agreements. Using that model as a basis, the United States has reached agreement with a number of countries to ensure cooperation to prevent acts of unlawful seizure of aircraft and other unlawful acts against the safety of passengers, crew, aircraft, airports, and the air navigation facilities.

ICAO has also been effective in responding to the most recent terrorist threats to aviation. Thus, the Organization responded to the brutal attacks at the Rome and Vienna Airports with the Airport Security Protocol. In response to recent bombings—such as Pan Am 103—involving the use of undetectable plastic explosives,

ICAO has adopted, as a top priority, the development of a new Convention on the "tagging" of plastic explosives for detectability. We fully expect that ICAO, with the full participation of the United States, will conclude such a convention within the next year.

The IMO has also been active in the fight against international terrorist violence. The speed in which the IMO was able to conclude the Maritime Terrorism Convention, the most comprehensive anti-terrorist instrument to date, is a reflection on the Organization's resolve and effectiveness. In addition to the Maritime Terrorism Convention, the IMO has recently conducted a review of its existing maritime security measures to ensure that they are as comprehensive as possible and has decided to review such measures annually.

Both organizations thus have played a very useful role in the fight against international terrorism. ICAO is in the process of expanding its role in helping to improve airport security in Third World airports. We have pledged a contribution of $100,000 in support of this effort and the FAA has made available to ICAO two FAA security specialists for two years each.

Question 3. The U.S. has well over 3800 maritime platforms related to gas and oil extraction on its continental shelf. Will the Protocol to the Maritime Terrorism Convention on Unlawful Acts Against the Safety of Fixed Platforms act as a deterrent against terrorist acts directed at those platforms?

Answer. Although there have been few terrorist attacks against fixed platforms on the continental shelf to date, and none against United States installations, the creation of the Fixed Platform Protocol reflects the growing concern of the international community that fixed platforms are vulnerable targets for future terrorist activity. By increasing the likelihood that those who commit acts of terrorist violence aboard or against oil rigs, floating hotels, and other fixed platforms on the continental shelf will be apprehended and prosecuted, the Fixed Platform Protocol should serve as a significant deterrent against such acts of terrorism in the future.

Question 4. How will the Airport Security Protocol and the Maritime Terrorism Convention and its Fixed Platforms Protocol strengthen the United States counter-terrorism effort? Are there individuals now being held by nations party to these agreements that we wish to extradite?

Answer. Currently, no individuals are being held by nations that have already signed the Airport Security Protocol or Maritime Terrorism Convention whom we might wish to extradite under their provisions once the instruments are brought into force. It is likely, however, that United States' nationals will again be the victims of acts of terrorism and that the United States will continue to be one of the states whose conduct terrorists seek to affect by their attacks. By increasing the types of offenses covered by the "prosecute or extradite" regime, and by expanding the bases upon which the United States can assert its jurisdiction over such offenses, these international instruments will serve both as a deterrent and will increase the likelihood that in the future those responsible for acts of aviation and maritime terrorism will be held accountable.

Question 5. The Airport Security Protocol and the Maritime Terrorism Convention and its Protocol on Fixed Platforms include

criminal offenses that are not part of U.S. domestic law. Implementing legislation will be required. What is the current status of that legislation? Do you foresee any problems in enacting such legislation?

Answer. The Department of Justice has prepared drafts of domestic implementing legislation. These drafts have been made available to the Senate Foreign Relations Committee staff for review. The final version of the legislation will be submitted to Congress at the beginning of its next session. This legislation is similar to that which has been enacted with respect to the other anti-terrorism conventions to which the United States is a party, and we foresee no obstacles to their swift passage. In accordance with its usual practice, the United States will defer ratification until the legislation has been adopted, so as to ensure that we are able domestically to carry out our obligations under these treaties.

Question 6. Will the ratification or implementation of these international instruments create any new or additional financial costs to the United States Government? If so, what are these costs?

Answer. Because the treaties are not specific about safeguards, the Airport Security Protocol and Maritime Terrorism Convention and its Fixed Platform Protocol will not require significant new action on the part of the United States to increase security at airports or maritime ports. The principal foreseeable costs, then, would be those associated with prosecution of individual terrorists who commit offenses under these instruments.

Question 7. Are you aware of any organization or groups within the United States that oppose the ratification of these Protocols and Convention? Would you provide the Committee with a list of those groups that support each of these instruments?

Answer. These international instruments enjoy broad support both within the international and the domestic communities. We are not aware of any opposition to their ratification by any individual or group within the United States. Although we consulted with various interested groups and individuals during the negotiations (to keep them apprised and to solicit their views), we did not maintain a list of those groups that have specifically voiced support for these international instruments.

Question 8. Would you briefly outline for the Committee the United States Government's comprehensive strategy to respond to the problems of international terrorism? What, if any, have been our successes in this field?

Answer. Our counter-terrorism strategy rests on three pillars:

(1) We will not make concessions to terrorists. Granting their demands only increases the risk that the terrorists will hijack more planes, take more hostages, or commit other violent acts to achieve their objectives, such as the release of their comrades from prison.

(2) We will continue to bring pressure on those states that support terrorism. Their support, whether logistical or financial, makes terrorists groups more deadly. We are prepared to use a combination of political and economic pressures and, if warranted in light of all the circumstances, to use the military against such states.

(3) We are working to develop additional practical measures to identify, track, apprehend, and prosecute terrorists. The interna-

tional treaties, such as those the Committee is considering today, provide additional tools to insure that all terrorists, whether they attack airports, ships, or fixed platforms, are apprehended, prosecuted, and punished.

Our counter-terrorism efforts include three approaches:

(1) *Unilateral.*—The steps we take on our own, such as improving the security of our buildings and conducting research to develop better equipment for detecting terrorist devices;

(2) *Bilateral.*—The steps we take with like-minded countries to improve the sharing of intelligence information and cooperation in dealing with terrorist threats; and

(3) *Multilateral.*—The efforts such as these international instruments which strengthen the framework of international law and cooperation against terrorists.

There have been some important recent successes in our war against terrorism, especially in the legal field. The Germans gave a life sentence to Hamadie for his role in the TWA 847 hijacking in which an American Navy diver was killed, and a United States court gave a 30-year sentence to Fawaz Yunis for the 1985 attack on a Jordanian airliner. We are currently pursuing efforts to extradite Mohamed Rashid, now in Greek custody, on grounds that he put a bomb aboard a Pan Am airliner in 1982.

Question 9. Clearly, no one definition of terrorism has gained universal acceptance. How do these agreements deal with this problem?

Answer. The Airport Security Protocol, the Maritime Terrorism Convention, and the Fixed Platforms Protocol, like the other anti-terrorism conventions to which the United States is a party, do not attempt to define terrorism. Rather, these instruments proscribe, and create national jurisdiction over acts, which by their nature are a threat to civil aviation and maritime travel and are typically committed by terrorists. By agreeing that the offenses enumerated in these instruments are criminal regardless of motivation, the instruments avoid the controversy over who is a "terrorist" and who is a "freedom fighter."

Question 10. How, if at all, do these instruments address the problems of state-sponsored terrorism?

Answer. These instruments criminalize certain acts. The perpetrators of such acts are considered criminals whether they acted alone or with the assistance, or under the direction, of a State sponsor. Therefore, acts of state sponsored terrorism are covered to the same degree as other acts of terrorism.

Question 11. Do any of the signatories provide financial or other support to terrorist groups? If so, how is it consistent with United States counter-terrorism efforts to become party to treaties with such countries?

Answer. Among the States that in the past have provided sanctuary, training, documents, financial assistance, weapons, and/or explosives to terrorists are Afghanistan, Cuba, Iran, Iraq, Libya, Nicaragua, North Korea, South Yemen, and Syria. None of these countries has yet become signatories to the Airport Security Protocol, the Maritime Terrorism Convention, or the Fixed Platforms Protocol. The intent behind these international instruments, however, is to unite the world community in opposing and punishing

terrorist conduct. Therefore, should one of the States that has in the past been a sponsor of terrorism wish to join the anti-terrorist regime created by these instruments, this would be viewed as a positive step, and would provide an additional tool to bring pressure on such states to terminate their support of terrorists.

Question 12. Why was it necessary to negotiate a separate Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms?

Answer. The United States originally sought to have fixed platforms included in the scope of the Maritime Terrorism Convention. Our initial efforts to this end, however, met with resistance from a few countries which feared that bringing fixed platforms within the Convention's coverage would intrude into their domestic jurisdiction over the continental shelf. Land-locked countries, moreover, expressed little interest for inclusion of a provision on fixed platforms. In light of these facts, the United States delegation proposed and worked for adoption of an optional protocol on fixed platforms. All but two of the forty-one countries that have so far signed the Maritime Terrorism Convention have also signed the Fixed Platforms Protocol.

Question 13. Did the United States achieve all its goals in negotiating these agreements? Were any United States proposals rejected?

Answer. These international instruments represent an important success for the United States. Our negotiators achieved virtually every negotiating goal. The Maritime Terrorism Convention, with its expansive list of offenses and its broad jurisdictional provisions, represents a milestone for the United States in obtaining international agreement on our counter-terrorism concepts. As mentioned above, the one United States proposal that was rejected—the inclusion of a provision covering fixed platforms in the Maritime Terrorism Convention—was but a minor setback since nearly every one of the Convention's signatories has also signed the Fixed Platforms Protocol.

Question 14. Under the Maritime Terrorism Convention, does the United States have any priority on the rights of extradition? How will the process work?

Answer. The United States is unlikely to be the state of registry (the flag state) of a ship subject to a terrorist attack, but it has been, and will unfortunately likely continue to be, the state of nationality of victims as well as one of the states whose conduct terrorists seek to affect by their attacks. The United States therefore opposed a proposal to give priority to an extradition request by the flag state. As a compromise, we joined consensus in adopting the language contained in Article 11, paragraph 5, which provides that "a State Party which receives more than one request for extradition . . . shall, in selecting the State to which the offender or alleged offender is to be extradited, pay due regard to the interests and responsibilities of the State Party whose flag the ship was flying at the time of the commission of the offence." This provision preserves the flexibility of the Requested State to consider all relevant interests and circumstances in deciding where to extradite the offender.

Question 15. Does the United States consider itself bound to submit to the compulsory jurisdiction of the International Court of Justice in respect to disputes arising under the Maritime Terrorism Convention?

Answer. No. The following reservation should be included in the resolution of advice and consent to ratification: ". . . subject to a reservation being made by the United States pursuant to Article 16(2), declaring that it does not consider itself bound by Article 16(1) insofar as it relates to the referral of disputes to the International Court of Justice."

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